



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 123

AS ENACTED

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. J. Miller

AN ACT relating to the transfer of money and other things of value and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 366A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

This chapter may be cited as the Kentucky Money Transmitters Act of 2006.

SECTION 2. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person;

(2) "Agent" means a person authorized by written agreement and designated by the licensee to act on behalf of a licensee under the provisions of this chapter;

(3) "Applicant" means a person filing an application or renewal application for a license under this chapter;

(4) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant;

(5) "Controlling person" means any person in control of a licensee;

- 1 (6) "Director" means a member of a licensee's or applicant's board of directors if the
 2 applicant or licensee is a corporation, or manager if the applicant or licensee is a
 3 limited liability company, or a partner if the applicant or licensee is a
 4 partnership;
- 5 (7) "Electronic instrument" means a card or other tangible object for the
 6 transmission or payment of money, including a stored value card or device, which
 7 contains a microprocessor chip, magnetic stripe, or other means for storage of
 8 information, that is prefunded and for which the value is decremented upon each
 9 use, but does not include a card or other tangible object that is redeemable by the
 10 issuer in the issuer's goods and services;
- 11 (8) "Executive director" means the executive director of the Office of Financial
 12 Institutions;
- 13 (9) "Executive officer" means the president, chairperson of the executive committee,
 14 responsible individual, chief financial officer and any other person who performs
 15 similar functions;
- 16 (10) "Financial institution" means any person doing business under the laws of any
 17 state or commonwealth or the United States relating to banks, bank holding
 18 companies, savings banks, savings and loan associations, trust companies, or
 19 credit unions;
- 20 (11) "Insolvent" means that appearing upon examination of any licensee or its agent
 21 that its liabilities exceeds its assets or it cannot meet its obligations in the usual
 22 and ordinary course of business for any reason;
- 23 (12) "Key shareholder" means any person, or group of persons acting in concert, who
 24 is the owner of twenty percent (20%) or more of any voting class of an applicant's
 25 or licensee's stock;
- 26 (13) "Licensee" means a person licensed under this chapter;
- 27 (14) "Material litigation" means litigation that according to generally accepted

1 accounting principles is significant to an applicant's or a licensee's financial
 2 health, and would be required to be disclosed in the applicant's or licensee's
 3 annual audited financial statements, report to shareholders, or similar records,
 4 including any adjudication against an applicant or licensee by a federal or state
 5 administrative or regulatory agency relating to a violation of the Bank Secrecy
 6 Act, 31 U.S.C. Sections 5311-5332 and 31 C.F.R. part 103, regardless of whether
 7 the applicant or licensee has admitted liability or fault;

8 (15) "Monetary value" means a medium of exchange whether or not redeemable in
 9 money;

10 (16) "Money" means a medium of exchange that is authorized or adopted by the
 11 United States or a foreign government or other recognized medium of exchange,
 12 including a monetary unit of account established by an intergovernmental
 13 organization or by agreement between two (2) governments;

14 (17) "Money transmission" means engaging in the business of receiving money or
 15 monetary value to transmit, deliver, or instruct to be transmitted or delivered,
 16 money or monetary value to another location inside or outside the United States
 17 by any and all means, including but not limited to wire, facsimile, electronic
 18 transfer, or issuing stored value;

19 (18) "Money transmitter" means a person that is engaged in money transmission;

20 (19) "Net worth" means the excess of assets over liabilities as determined by generally
 21 accepted accounting principles;

22 (20) "Office" means the Kentucky Office of Financial Institutions;

23 (21) "Outstanding payment instrument" means any payment instrument issued by the
 24 licensee which has been sold or issued in the United States directly by the licensee
 25 or any payment instrument issued by the licensee which has been sold by an
 26 agent of the licensee in the United States, which has been reported to the licensee
 27 as having been sold, and which has not yet been paid by or for the issuer;

1 (22) (a) "Payment instrument" means:

2 1. A check, draft, money order, traveler's check or other written or
 3 electronic instrument or order for the transmission or payment of
 4 money, sold or issued to one or more persons, whether or not such
 5 instrument is negotiable; or

6 2. The purchase or the deposit of funds for the purchase of a check,
 7 draft, money order, traveler's check or other written or electronic
 8 instrument;

9 (b) "Payment instrument" does not include any credit card voucher, letter of
 10 credit, or instrument that is redeemable by the issuer in goods or services;

11 (23) "Person" means any individual, corporation, business trust, estate, trust,
 12 partnership, limited liability company, association, organization, joint venture,
 13 government and any subdivision, agency or instrumentality thereof, or any other
 14 legal or commercial entity;

15 (24) "Record" means information that is inscribed on a tangible medium, or that is
 16 stored in an electronic or other medium, and is retrievable in perceivable form;

17 (25) "Remit" means either to make direct payment of the funds to the licensee or its
 18 representatives authorized to receive those funds, or to deposit the funds in a
 19 bank, credit union, or savings and loan association or other similar financial
 20 institution in an account specified by the licensee;

21 (26) "Responsible individual" means an individual who is employed by a licensee and
 22 has principal managerial authority over the provision of money transmission by
 23 the licensee in this state;

24 (27) "State" means a state or commonwealth of the United States, the District of
 25 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
 26 insular possession that is subject to the jurisdiction of the United States;

27 (28) "Stored value" means monetary value that is evidenced by an electronic record;

1 and

2 (29) "Unsafe or unsound practice" means a practice or conduct by a person licensed
 3 to provide money transmission, or an agent of such a person, which creates the
 4 likelihood of material loss, insolvency, or dissipation of the licensee's assets, or
 5 otherwise materially prejudices the financial condition of the licensee or the
 6 interests of its customers.

7 SECTION 3. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 8 READ AS FOLLOWS:

9 (1) On or after October 1, 2006, no person shall engage in the business of money
 10 transmission in this state without a license, or without being an agent of a
 11 licensee, as provided in this chapter.

12 (2) A person is deemed to be engaged in the business of money transmission under
 13 this chapter if the person advertises those services, provides those services with or
 14 without compensation, solicits to provide those services or holds itself out as
 15 providing those services to or from this state, even if the person has no physical
 16 presence in this state.

17 (3) A licensee may conduct its business in this state at one or more locations, directly
 18 or indirectly owned, or through one or more agents, or both, pursuant to the
 19 single license issued to the licensee.

20 (4) A license issued under this chapter shall not be transferred or assigned.

21 SECTION 4. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 22 READ AS FOLLOWS:

23 This chapter does not apply to:

24 (1) The United States or any department, agency, or instrumentality thereof;

25 (2) The United States Post Office or a contractor acting on behalf of the United
 26 States Post Office;

27 (3) A state, or any agency, department or political subdivision of a state;

(4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. secs. 181 to 1867, or a corporation organized under the Edge Act, 12 U.S.C. secs. 611 to 633.

(5) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality thereof, or any state or any political subdivisions thereof.

SECTION 5. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
READ AS FOLLOWS:

(1) Each application for a license under this chapter shall be made in writing and in a form and medium prescribed by regulation by the executive director. The application shall state or contain the following:

(a) The legal name of the applicant, business addresses, and residential addresses, if applicable, of the applicant, and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business addresses, date of birth, social security number, and employment history for the five (5) year period preceding the filing of the application, of the applicant's proposed responsible individual;

(c) A list and description of any criminal conviction, other than a traffic violation, of the applicant and proposed responsible individual, for the ten (10) year period preceding the filing of the application. The executive director may request a copy of any criminal conviction from the applicant, which shall be promptly provided by the applicant to the executive director

1 within ten (10) working days of the request;

2 (d) A list and description of any material litigation of the applicant and
3 proposed responsible individual, for the ten (10) year period preceding the
4 filing of the application. The executive director may request a copy of any
5 material litigation from the applicant, which shall be promptly provided by
6 the applicant to the executive director within ten (10) working days of the
7 request;

8 (e) A description of the activities conducted by the applicant and a history of
9 operations, including, if applicable, a description of any money
10 transmission that has been previously provided by the applicant in this
11 state;

12 (f) A list of other states or countries in which the applicant is licensed to
13 engage in money transmission or other similar money services, and any
14 license revocations, suspensions, restrictions, or other disciplinary action
15 taken against the applicant in another state or country;

16 (g) A list of any license revocations, suspensions, restrictions, or other
17 disciplinary action taken against any money transmission business
18 involving the proposed responsible individual;

19 (h) A description of the source of money and credit to be used by the applicant
20 to provide money transmissions;

21 (i) A sample form of contract for an agent;

22 (j) A sample form of payment instrument;

23 (k) Information concerning any bankruptcy, reorganization, or receivership
24 proceedings involving or affecting the applicant or the proposed responsible
25 individual;

26 (l) A list identifying the name, physical location or locations and telephone
27 number at which the applicant and its proposed agents intend to conduct

1 money transmission business in the state at the time of the filing of the
 2 license application;

3 (m) The name, address, and telephone number of the clearing bank or banks on
 4 which the applicant's payment instruments will be drawn or through which
 5 such payment instruments will be payable;

6 (n) A copy of the written procedures that will be provided by the applicant or
 7 licensee to its agent or agents;

8 (o) That neither the applicant, nor any executive officer, nor person who
 9 exercises control over the applicant, nor key shareholder, nor any proposed
 10 agent, nor the proposed responsible individual, is listed on the specially
 11 designated nationals and blocked persons list prepared by the United States
 12 Department of the Treasury or the United States Department of State under
 13 Presidential Executive Order No. 13224 as a potential threat to commit
 14 terrorist acts and to finance terrorist acts; and

15 (p) Any other information regarding the background, experience, character,
 16 financial responsibility, or general fitness of the applicant, the applicant's
 17 responsible individual, or agent that the executive director may require by
 18 rule or order.

19 (2) If the applicant is a corporation, limited liability company, partnership, or other
 20 entity, then the applicant shall also provide:

21 (a) A copy of the applicant's filed articles of incorporation;

22 (b) The name, address, and telephone number of the registered process agent of
 23 the applicant in this state;

24 (c) If applicable, then a certificate of good standing from the state or country in
 25 which the applicant was incorporated or formed;

26 (d) A description of the corporate structure of the applicant, including the
 27 identity of any parent or subsidiary of the applicant, and the disclosure of

whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The legal name, any fictitious or trade name, all business and residence addresses, date of birth, social security number, and employment history for the ten (10) year period preceding the filing of the application for each executive officer, board director, key shareholder, or person that has control of the applicant;

(f) Copies and description of material litigation for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;

(g) Copies and descriptions of criminal convictions, other than traffic violations, for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;

(h) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statements and, in each case, if available, for the two (2) year period preceding the filing of the application;

(i) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two (2) year period preceding the filing of the application;

(j) If the applicant is publicly traded, then a copy of the most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m;

(k) If the applicant is a wholly owned subsidiary of:

1. A corporation publicly traded in the United States, then a copy of audited financial statements for the parent corporation for the most

recent fiscal year or a copy of the parent corporation's most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m; or

2. A corporation publicly traded outside of the United States, a copy of similar documentation for the most recent fiscal year filed with the regulator of the parent corporation's domicile outside the United States.

(3) Every corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation.

(4) Every applicant shall, at the time of the filing of an application for a license under this chapter and at all times after a license is issued, be registered or qualified to do business in this state.

(5) The executive director is authorized, for good cause, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

SECTION 6. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

Each licensee under this chapter shall at all times have a net worth of not less than five hundred thousand dollars (\$500,000), calculated in accordance with generally accepted accounting principles.

SECTION 7. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Each application shall be accompanied by a surety bond or other similar security acceptable to the executive director, in the amount of at least five hundred thousand dollars (\$500,000). The executive director may increase the amount of

1 the surety bond, or other similar security, to a maximum of five million dollars
2 (\$5,000,000), upon the basis of the financial condition of an applicant, as
3 evidenced by net worth, transaction volume, or other relevant criteria, that the
4 executive director may establish by order or rule.

5 (2) The surety bond, or other similar security acceptable to the executive director,
6 shall be in a form satisfactory to the executive director and shall hold and bind
7 the principal and surety to the Commonwealth of Kentucky for the benefit of any
8 claimants against the licensee to secure the faithful performance of the
9 obligations of the licensee with respect to the receipt, handling, transmission, and
10 payment of money in connection with the sale and issuance of payment
11 instruments or money transmissions by the licensee and its agent. The aggregate
12 liability of the surety bond or other similar security accepted shall not exceed the
13 principal sum of the bond.

14 (3) A claimant may maintain a civil action on the surety bond, or other similar
15 security acceptable to the executive director, against a licensee, or the executive
16 director may maintain an action on behalf of the claimant, in the Franklin
17 Circuit Court, or in any other court of competent jurisdiction, either in one action
18 or in successive actions.

19 (4) A licensee shall at all times maintain a surety bond, or other similar security
20 acceptable to the executive director, in the amount and type required under
21 subsections (1) and (2) of this section. The executive director may, at any time,
22 accept a substitute or replacement surety bond, or other acceptable similar
23 security, from the licensee, provided that the requirements of subsections (1) and
24 (2) are met.

25 (5) The surety bond, or other similar security acceptable to the executive director,
26 shall be continuous and remain in effect until canceled. The licensee shall
27 provide the executive director with at least a thirty (30) day written notice of the

intent to cancel the surety bond or other similar security accepted by the executive director. The cancellation of the surety bond or other acceptable security shall not affect any liability incurred or accrued during the thirty (30) day notice of cancellation period.

(6) A surety bond, or other security acceptable to the executive director, shall remain in place and cover claims for at least five (5) years after the date of any violation of this chapter by the licensee or its agent, or the date the licensee ceases providing money transmission services in this state, whichever date occurs last. The executive director may permit the licensee to reduce or eliminate the surety bond, or other similar security approved by the executive director, prior to the expiration of the five (5) years, to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.

SECTION 8. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Every licensee shall, at all times, maintain permissible investments that have a market value that is computed in accordance with generally accepted accounting principles. These investments shall not be less than the aggregate amount of all outstanding payment instruments.

(2) Except to the extent otherwise limited in subsection (5) of this section, the following investments are permissible for a licensee:

(a) Cash, time deposits, savings deposits, demand deposits, a certificate of deposit, or senior debt obligation of an insured depository institution as defined in 12 U.S.C. sec. 1813 or as defined under 12 U.S.C. sec. 1781;

(b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(c) An investment bearing a rating of one of the three (3) highest grades as

defined by a nationally recognized organization that rates securities;

(d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(e) Receivables that are payable to a licensee from its agents, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not hold, at one time, receivables under this paragraph in any one person aggregating more than ten percent (10%) of the licensee's total permissible investments.

(3) The following investments are permissible under this section, but only to the extent specified as follows:

(a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph do not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this paragraph in any one person aggregating more than ten percent (10%) of the licensee's total permissible investments;

(b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission pursuant to 15 U.S.C. secs. 80a-1 to 80a-64, and whose portfolios are restricted by the management company's

investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if:

1. The aggregate of investments under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and

2. The licensee does not, at one time, hold investments under this paragraph in any one person aggregating more than ten percent (10%) of the licensee's total permissible investments; and

(c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if:

1. The aggregate amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and

2. The licensee does not, at one time, hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than ten percent (10%) of the licensee's total permissible investments.

(4) The aggregate of investments under subsection (3) of this section shall not exceed fifty percent (50%) of the total permissible investments of a licensee.

(5) The executive director may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The executive director may by rule or order allow other types of investments that the executive director determines to be substantially equivalent to other permissible

investments in regards to safety and soundness.

(6) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of insolvency or bankruptcy of the licensee.

SECTION 9. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

Each application shall be accompanied by a nonrefundable application fee in the amount of five hundred dollars (\$500) and a nonrefundable license fee of five hundred dollars (\$500) if application is made on or before March 31, or the next business day if March 31 falls on a weekend or holiday. If application is made after March 31, the license fee shall be two hundred fifty dollars (\$250). The license shall remain in force through September 30 of the same year the license is issued.

SECTION 10. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Upon the filing of a complete application, the executive director shall investigate the competence, experience, character, financial condition, and responsibility of the applicant. The executive director may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. The executive director shall review each application on a case-by-case basis. If the executive director finds that the applicant has the competence, experience, character, financial condition and responsibility, and has fulfilled the requirements of this chapter, then the executive director shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state. If any of these requirements has not been met, then the executive director shall deny the application, in writing setting out the reason for the denial.

(2) The executive director shall approve, or deny in writing, every completed

1 application for a license within one hundred twenty (120) days from the date a
 2 complete application is submitted, which period may be extended for good cause
 3 by the executive director.

4 (3) The executive director may deny a license application where the applicant does
 5 not meet the requirements of this chapter or for any of the grounds under Section
 6 20 of this Act.

7 (4) The executive director may probate, place conditions upon, or refuse to issue or
 8 renew any license issued under this chapter.

9 (5) The executive director may in writing deny, or refuse to renew the designation of
 10 an agent by a licensee for any of the grounds found in Section 21 of this Act.

11 (6) A person is deemed to have received a copy of a written denial issued by the
 12 executive director in this section within three (3) days of its mailing.

13 (7) Any person who has had his license application or designation as an agent
 14 denied by the executive director may file a written application for an
 15 administrative hearing in accordance with KRS Chapter 13B. The written
 16 application shall be filed with the executive director within twenty (20) days of the
 17 date of the denial.

18 (8) A written application for an appeal shall be made in good faith and shall briefly
 19 state the reason or reasons the person is aggrieved, together with the grounds to
 20 be relied upon as a basis for the relief to be sought at the hearing.

21 (9) Any person who has had his license application, or designation as an agent,
 22 denied by the executive director may not file another application for a license, or
 23 designation as an agent, under this chapter for one (1) year after the date of the
 24 denial.

25 SECTION 11. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) A licensee under this chapter shall pay an annual renewal fee of five hundred

1 dollars (\$500) no later than September 20 of each year.

2 (2) The renewal fee shall be accompanied by a written renewal report, in a form
3 prescribed by the executive director, which shall include:

4 (a) A copy of the licensee's most recent audited annual financial statement, or
5 if the licensee is a wholly owned subsidiary of another corporation, the most
6 recent audited consolidated annual financial statement of the parent
7 corporation, or the licensee's most recent audited financial statement;

8 (b) For the most recent quarter for which data is available prior to the date of
9 the filing of the renewal application, but in no event more than one
10 hundred twenty (120) days prior to the renewal date, a list of the number of
11 payment instruments sold by the licensee in the state, the dollar amount of
12 those instruments, and the dollar amount of those instruments currently
13 outstanding;

14 (c) Any material changes to any of the information submitted by the licensee
15 on its original application which have not previously been reported to the
16 executive director on any other report required to be filed under this
17 chapter;

18 (d) A list of the licensee's permissible investments under this chapter and a
19 certification that the licensee continues to maintain permissible investments
20 according to the requirements set forth in section 8 of this Act; and

21 (e) A list of the locations, including names, physical addresses, and telephone
22 numbers, in this state where the licensee or agent of the licensee engages in
23 money transmission.

24 (3) The failure of a licensee to pay the annual renewal fee or file the written renewal
25 report, by the renewal date of September 20, shall result in the expiration of the
26 licensee's license by operation of law by September 30 of the same year. The
27 executive director may reinstate the license if the licensee becomes compliant

1 with this chapter and pays a civil penalty equal to the amount of the annual
 2 renewal fee, as specified in this section, within thirty (30) days of the expiration
 3 of the license.

4 SECTION 12. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 5 READ AS FOLLOWS:

6 A licensee shall file a written report with the executive director within fifteen (15)
 7 business days of its knowledge of the occurrence of any one of the events listed below.
 8 In the written report, the licensee shall describe the event and its expected impact on
 9 the licensee's activities in the state:

10 (1) Any material change in information provided in a licensee's application or
 11 renewal report;

12 (2) The cancellation or other impairment of the licensee's bond or other similar
 13 security accepted by the executive director;

14 (3) Insolvency or the filing for bankruptcy or reorganization under the United States
 15 Bankruptcy Code, 11 U.S.C. secs. 101 to 110, by the licensee, responsible
 16 individual, any agent, or any key officers or directors;

17 (4) The filing of a petition by or against the licensee, or any agent of the licensee, for
 18 receivership, the commencement of any other judicial or administrative
 19 proceeding for its dissolution or reorganization, or the making of a general
 20 assignment for the benefit of its creditors;

21 (5) The filing of any material litigation against the licensee by any state or federal
 22 governmental authority, or by any country in which the licensee engages in the
 23 business of money transmission or is licensed;

24 (6) Any felony indictment of the licensee, responsible individual, agent, or any of its
 25 key officers or directors;

26 (7) Any felony conviction of the licensee, responsible individual, agent, or any of its
 27 key officers or directors;

(8) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving the business of money transmission; and

(9) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving fraud, theft, or breach of trust.

SECTION 13. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) A licensee shall give the executive director written notice of a proposed change of control within fifteen (15) days after learning of the proposed change of control and at least thirty (30) days prior to the proposed change of control.

(2) A licensee shall file a written request for approval of the acquisition with the executive director. A licensee shall also submit, with the notice, a nonrefundable fee of one hundred dollars (\$100).

(3) After review of a request for approval under subsection (1) of this section, the executive director may require the licensee to provide additional information concerning the proposed person in control.

(4) The executive director shall approve a request for change of control under subsection (1) of this section if, after investigation, the executive director determines that the person or group of persons requesting approval has the competence, experience, character, financial condition, and responsibility to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interest of the public will not be jeopardized by the change of control.

(5) The following persons are exempt from the requirements of subsection (1) of the section, but the licensee shall notify the executive director, within fifteen (15) days after learning of a change of control:

- 1 (a) A person that acts as a proxy for the sole purpose of voting at a designated
 2 meeting of the security holders or holders of voting interests of a licensee or
 3 person in control of a licensee;
 4 (b) A person that acquires control of a licensee by devise or descent;
 5 (c) A person that acquires control as a personal representative, custodian,
 6 guardian, conservator, or trustee, or as an officer appointed by a court of
 7 competent jurisdiction or by operation of law; and,
 8 (d) A person that the executive director exempts by regulation or order if it is in
 9 the public interest to do so.

10 (6) Subsection (1) of this section does not apply to public offerings of securities.

11 (7) Before filing a request for approval to acquire control, a person may request in
 12 writing a determination from the executive director as to whether the person
 13 would be considered a person in control of a licensee upon consummation of a
 14 proposed transaction. If the executive director determines that the person would
 15 not be a person in control of a licensee, then the executive director may enter an
 16 order or respond in writing, to that effect, and the proposed person and
 17 transaction shall not be subject to the requirements of this section.

18 SECTION 14. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) The executive director may conduct an examination or investigation of a licensee
 21 or any of its agents, as it relates to the business of money transmission.

22 (2) The executive director may conduct an examination or investigation in
 23 conjunction with representatives of other agencies of this state or agencies of
 24 another state or of the federal government. Instead of an examination, the
 25 executive director may accept the examination report of an agency of this state or
 26 of another state or of the federal government or a report prepared by an
 27 independent licensed or certified public accountant. The reasonable expenses

incurred by the office, other Kentucky agencies, agencies of another state, agencies of the federal government or an independent licensed or certified accountant in making such examination, investigation, or report shall be borne by the licensee.

(3) A joint examination or an acceptance of an examination report does not preclude the executive director from conducting an examination as provided by law. A joint report or a report accepted under this subsection is an official report of the executive director for all purposes.

(4) A licensee or agent is deemed to consent to the executive director's examination or investigation, whether or not prior notice is given to the licensee or agent, of the books, records, and business operations of the licensee or agent of the licensee.

(5) A report of examination of a licensee under this section shall be considered confidential and privileged and not subject to disclosure under the Kentucky Open Records Act, KRS 61.870-61.884. However, a licensee may disclose a Kentucky report of examination to a financial institution upon written request from the financial institution for the purpose of assisting the financial institution in its compliance with the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. part 103. The licensee shall provide written notice to the executive director of the disclosure of the Kentucky report of examination at the same time that disclosure is made to the financial institution.

SECTION 15. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Each licensee shall make, keep, and preserve the following books, accounts and other records for a period of five (5) years and these records shall be open to inspection by the executive director:

(a) A record or records of each payment instrument sold;

- 1 (b) A general ledger containing all assets, liability, capital, income and expense
- 2 accounts, which general ledger shall be posted at least monthly;
- 3 (c) Bank statements and bank reconciliation records;
- 4 (d) Records of outstanding payment instruments;
- 5 (e) Records of each payment instrument paid within the five (5) year period;
- 6 (f) A list of the names, addresses, and telephone numbers of all of the
- 7 licensee's agents;
- 8 (g) Copies of all currency transaction reports and suspicious activity reports
- 9 filed in compliance with Section 16 of this Act; and,
- 10 (h) Any other record the executive director may reasonably require by order or
- 11 regulation.

12 (2) Records required to be maintained in this chapter may be kept in an electronic
 13 retrievable format or other similar form of medium.

14 (3) Records may be maintained by a licensee or agent at a location other than within
 15 this state so long as they are made accessible to the executive director upon seven
 16 (7) business day's written notice.

17 SECTION 16. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) Every licensee and its agent shall file with the executive director all reports by
 20 federal currency reporting, recordkeeping, and suspicious transaction reporting
 21 requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332,
 22 31 C.F.R. part 103, and other federal and state laws pertaining to money
 23 laundering, for every transaction in this state. Every licensee and its agent shall
 24 maintain copies of these reports in its records in compliance with Section 15 of
 25 this Act.

26 (2) The timely filing of a complete and accurate report required under subsection (1)
 27 of this section with the appropriate federal agency is deemed compliance with the

requirements of subsection (1) of this section, unless the executive director notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.

SECTION 17. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Documents, materials, reports, or other information in the possession or control of the executive director that is provided according to this chapter shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870-61.884. These documents, materials, reports, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless, after notice to the executive director and a hearing, a court of competent jurisdiction determines that the executive director would not be prejudiced. However, the executive director may use the documents, materials, reports, or other information in the furtherance of any regulatory or legal action brought as a part of the executive director's official duties.

(2) Neither the executive director nor any person who received documents, materials, reports, or other information while acting under the authority of the executive director shall be permitted or required to testify in any civil action concerning any confidential documents, materials, reports, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the executive director's duties, the executive director:

(a) May share documents, materials, reports or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (1) and (2) of this section, with other

1 state, federal, and international regulatory agencies, with the Money
 2 Transmitter Regulators Association, its affiliates or subsidiaries, and with
 3 local, state, federal, and international law enforcement authorities, if the
 4 recipient agrees to maintain the confidentiality and privileged status of the
 5 documents, materials, reports, or other information;

6 **(b) May receive documents, materials, reports, or other information, including**
 7 otherwise confidential and privileged documents, materials, reports, or
 8 information from the Money Transmitter Regulators Association, its
 9 affiliates or subsidiaries, and from regulatory and law enforcement officials
 10 of other foreign or domestic jurisdictions, and shall maintain as
 11 confidential and privileged any documents, materials, reports, or
 12 information received with notice or the understanding that they are
 13 confidential and privileged under the laws of the jurisdiction that is the
 14 source of the documents, materials, reports, or information;

15 **(c) May enter into agreements governing the sharing and use of information,**
 16 including the furtherance of any regulatory or legal action brought as part
 17 of the recipient's official duties;

18 **(d) May disclose to the public a list of person licensed under this chapter or the**
 19 aggregate financial data concerning those licensees; and,

20 **(e) May disclose to the public any order issued under this chapter that is the**
 21 result of an administrative or legal action against a licensee, agent of a
 22 licensee, responsible individual, key shareholder, executive officer, or
 23 director.

24 **(4) No waiver of any applicable privilege or claim of confidentiality in the**
 25 documents, materials, reports, or information shall occur as a result of disclosure
 26 to the executive director under this subsection or as a result of sharing as
 27 authorized in subsection (3) of this section.

1 SECTION 18. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
2 READ AS FOLLOWS:

3 Licensees desiring to conduct licensed activities through agents shall authorize each
4 agent to operate pursuant to an express written contract, which shall include the
5 following provisions:

6 (1) That the licensee designates the person as its agent with authority to engage in
7 money transmission on behalf of the licensee as authorized under this chapter;

8 (2) That the agent shall operate in full compliance with this chapter, and rules
9 promulgated under this chapter, and any order issued by the executive director
10 pursuant to this chapter;

11 (3) That neither a licensee nor an agent of the licensee may authorize subagents;

12 (4) That the agent shall timely remit all money legally due to the licensee in
13 accordance with the terms of the written contract between the licensee and the
14 agent;

15 (5) That the licensee and agent are subject to regulation by the executive director;
16 and,

17 (6) That the licensee and agent shall comply with applicable federal and state law.

18 SECTION 19. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
19 READ AS FOLLOWS:

20 (1) An agent shall not make any fraudulent statements or misrepresentations to a
21 licensee or to the executive director.

22 (2) All money transmissions, or sale, or issuance of payment instrument activities
23 conducted by agents shall be strictly in accordance with the licensee's written
24 procedures provided to the agent.

25 (3) An agent shall timely remit all money legally due to the licensee in accordance
26 with the terms of the contract between the licensee and the agent. The executive
27 director shall have the discretion to set, by regulation or order, the maximum

1 remittance time.

2 (4) An agent shall act only as authorized under the contract with the licensee.

3 (5) All funds, less fees, received by an agent of a licensee from the sale or delivery of
 4 a payment instrument issued by a licensee or received by an agent for
 5 transmission shall, from the time the funds are received by the agent until such
 6 time when the funds or an equivalent amount are remitted by the agent to the
 7 licensee, constitute trust funds owned by and belonging to the licensee. If an
 8 agent commingles any of these funds with any other funds or property owned or
 9 controlled by the agent, then all commingled proceeds and other property shall be
 10 impressed with a trust in favor of the licensee in an amount equal to the amount
 11 of the proceeds due the licensee.

12 (6) An agent shall report to the licensee the theft, forgery, or loss of payment
 13 instruments within twenty-four (24) hours from the time it knew of the theft,
 14 forgery, or loss.

15 SECTION 20. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) The executive director may issue a written order to suspend or revoke a license
 18 issued under this chapter if the executive director finds that:

19 (a) The licensee no longer meets the requirements to hold a license under this
 20 chapter;

21 (b) Any fact or condition exists that, if it had existed at the time the licensee
 22 applied for its license, would have been grounds for denying the
 23 application;

24 (c) The licensee's net worth, as determined in accordance with generally
 25 accepted accounting principles, falls below the required net worth as
 26 prescribed in Section 6 of this Act, and the licensee, after ten (10) days
 27 written notice from the executive director, fails to take such action as the

1 executive director deems necessary to remedy such deficiency;

2 (d) The licensee violates any provision of this chapter, any administrative
3 regulation promulgated thereunder, or order of the executive director issued
4 under authority of this chapter, or any other state law or regulation related
5 to the business of money transmission;

6 (e) The licensee is conducting its business in an unsafe or unsound manner;

7 (f) The licensee engages in an unfair and deceptive act or practice;

8 (g) The licensee engages in fraud, intentional misrepresentation, or gross
9 negligence;

10 (h) The licensee is insolvent;

11 (i) The licensee has suspended payment of its obligations or has made an
12 assignment for the benefit of its creditors;

13 (j) The licensee has applied for an adjudication of bankruptcy, reorganization,
14 arrangement, or other relief under the United States Bankruptcy Code, 11
15 U.S.C. Sections 101-110;

16 (k) The licensee fails to cooperate in an examination, investigation, or
17 subpoena issued by the executive director;

18 (l) The licensee fails to make any report required by this chapter;

19 (m) The licensee has been found to have violated any of the recordkeeping and
20 reporting requirements of the United States government including 31
21 U.S.C. secs. 5311 to 5332 and 31 C.F.R. part 103;

22 (n) The competence, experience, character, financial condition or responsibility
23 of the licensee indicates that it is not in the public interest to permit the
24 licensee to continue to provide money transmission services;

25 (o) The licensee has been convicted of a felony;

26 (p) The licensee has been convicted of a misdemeanor related to the business of
27 money transmission;

- 1 (q) The licensee has been convicted of a misdemeanor involving theft, fraud, or
 2 breach of trust;
- 3 (r) The licensee has failed to terminate or suspend its agent's authority to act
 4 on its behalf when the licensee knew, or has been given reasonable notice
 5 that its agent violated, or is about to violate, a material provision of this
 6 chapter, an administrative regulation promulgated thereunder, or an order
 7 of the executive director, or any grounds that are found in Section 21 of this
 8 Act; or
- 9 (s) The licensee, its responsible individual, or any agent, key shareholder,
 10 executive officer, director, or other person in control of the licensee are
 11 listed or become listed on the specially designated nationals and blocked
 12 persons list prepared by the United States Department of the Treasury or
 13 United States Department of State under Presidential Executive Order No.
 14 13224 as a potential threat to commit terrorist acts or to finance terrorist
 15 acts.
- 16 (2) A licensee who has had his license revoked or suspended by the executive director
 17 may file a written application for an administrative hearing in accordance with
 18 KRS Chapter 13B.
- 19 (3) A person is deemed to have received a copy of the written order of revocation or
 20 suspension with three (3) days of its mailing.
- 21 (4) A written application for an appeal shall be made with the executive director
 22 within twenty (20) days of the date of the order of suspension or revocation and
 23 shall be made in good faith and shall briefly state the reason or reasons the
 24 person is aggrieved, together with the grounds to be relied upon.
- 25 (5) The executive director shall not issue a license again under this chapter to any
 26 person whose license has been revoked until three (3) years after the date of the
 27 revocation, and thereafter, not until the person again qualifies under the

applicable provisions of this chapter. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this chapter.

(6) In determining whether a licensee is engaging in an unsafe or unsound practice under subsection (1)(e) of this section, the executive director may consider the size and condition of the licensee's provision of money transmissions, the magnitude of the loss, the gravity of the violation of this chapter, the administrative regulation adopted, or order issued under this chapter, any action taken by another state or federal government against the licensee, or the previous conduct of the licensee.

SECTION 21. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) The executive director may issue a written order suspending or revoking the designation of an agent, if the executive director finds that:

(a) The agent violates this chapter or a rule adopted or an order issued under this chapter;

(b) The agent does not cooperate with an examination, investigation, or subpoena issued by the executive director;

(c) The agent has engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The agent has been convicted of a felony;

(e) The agent has been convicted of a misdemeanor related to the business of money transmission;

(f) The agent has been convicted of a misdemeanor involving theft, fraud, or breach of trust;

(g) The competence, experience, character, or general fitness of the agent or a person in control of the agent indicates that it is not in the public interest to

- 1 permit the agent to be engaged in the business of money transmission;
- 2 (h) The agent is engaged in or is engaging in an unsafe or unsound practice;
- 3 (i) The agent is engaged in, or is engaging in, an unfair and deceptive act or
- 4 practice as that act or practice relates to the business of money
- 5 transmission;
- 6 (j) The agent is insolvent;
- 7 (k) The agent has applied for an adjudication of bankruptcy, reorganization,
- 8 arrangement, or other relief under the United States Bankruptcy Code, 11
- 9 U.S.C. secs. 101 to 110; or
- 10 (l) The agent fails to timely remit all money legally due to its licensee as
- 11 required by this chapter; or
- 12 (m) The agent, any executive officer or other persons in control of the agent, is
- 13 listed or become listed on the specially designated nationals and blocked
- 14 persons list prepared by the United States Department of the Treasury or
- 15 United States Department of State under Presidential Executive Order No.
- 16 13224 as a potential threat to commit terrorist acts or to finance terrorist
- 17 acts.
- 18 (2) In determining whether an agent is engaging in an unsafe or unsound practice
- 19 under subsection (1)(h) of this section, the executive director may consider the
- 20 size and condition of the agent's provision of money transmissions, the
- 21 magnitude of the loss, the gravity of the violation of this chapter, the
- 22 administrative regulation adopted, or order issued under this chapter, any action
- 23 taken by another state or federal government against the agent, or the previous
- 24 conduct of the agent.
- 25 (3) Any person who has his designation as an agent revoked or suspended by the
- 26 executive director may file a written application for an administrative hearing in
- 27 accordance with KRS Chapter 13B.

(4) An agent is deemed to have received a copy of the written order of revocation or suspension within three (3) days of its mailing.

(5) A written application for an appeal shall be made with the executive director within twenty (20) days of the date of the order of suspension or revocation in good faith and shall briefly state the reason or reasons the agent is aggrieved, together with the grounds to be relied upon.

(6) The executive director shall not designate a person as an agent again under this chapter where the designation of an agent has been revoked, until after three (3) years after the date of revocation, and thereafter, not until the person again qualifies under the applicable provisions of this chapter. Any person whose designation as an agent has been revoked twice by the executive director shall be deemed permanently revoked and shall not again be eligible for designation as an agent under this chapter.

SECTION 22. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
READ AS FOLLOWS:

(1) If the executive director has reason to believe or determines that a violation of this chapter, regulation adopted, or an order issued under this chapter, by any person, licensee, or agent has occurred or will occur, then he may issue an order to show cause why an order to cease and desist should not be issued requiring the person, licensee, or agent to cease and desist from the violation.

(2) The executive director may enter an order to cease and desist if the person, licensee, or agent, fails to show cause for the violation of the chapter, regulation, or order, within ten (10) days of the date of the receipt of the order of show cause.

(3) The executive director may petition the Franklin Circuit Court, or any court of competent jurisdiction, for an issuance of a temporary or permanent injunction, or any other appropriate judicial order, against any person, licensee, or agent that violates this chapter, regulation adopted, or order issued.

1 (4) An order issued under this section becomes effective when signed by the executive
 2 director. The order shall be delivered by certified mail to the last known address
 3 of the person, licensee, or agent. The order shall be deemed received by the
 4 person, licensee, or agent within three (3) days of its mailing with the United
 5 States Postal Service.

6 (5) The executive director may issue an order against a licensee to cease and desist
 7 from providing money transmission through an agent that is subject of a separate
 8 order from the executive director.

9 (6) An order to cease and desist remains effective and enforceable pending the
 10 completion of an administrative proceeding.

11 SECTION 23. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 12 READ AS FOLLOWS:

13 (1) If the executive director has reason to believe or determines that a violation of
 14 this chapter or of a regulation adopted, or an order issued under this chapter, by
 15 a licensee or agent will cause immediate or irreparable harm to the public health,
 16 safety or welfare, then the executive director may enter an emergency order
 17 suspending, limiting, or restricting the licensee's license or the designation of an
 18 agent, without prior notice or hearing.

19 (2) One (1) or more of the following circumstances shall be considered grounds for
 20 an emergency order suspending, limiting, or restricting a license or designation
 21 of an agent under this section:

22 (a) The licensee's or agent's indictment or conviction of a felony for a crime
 23 involving theft, fraud or breach of trust;

24 (b) The licensee's or agent's indictment or conviction under the USA
 25 PATRIOT Act of 2001, Pub.L.No. 107-56;

26 (c) The suspension or revocation of any other money transmitter license or
 27 equivalent license held by the licensee, or designation held by the agent in

1 another state or country;

2 (d) The licensee, its responsible individual, or any agent, key shareholder,
 3 executive officer, director, or other person in control of the licensee are
 4 listed or become listed on the specially designated nationals and blocked
 5 persons list prepared by the United States Department of the Treasury or
 6 United States Department of State under Presidential Executive Order No.
 7 13224 as a potential threat to commit terrorist acts or to finance terrorist
 8 acts; or

9 (e) Insolvency, or the filing of an application of bankruptcy, reorganization,
 10 arrangement, or other relief under bankruptcy, or an adjudication under
 11 the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110 by the
 12 licensee or agent.

13 (3) An emergency order issued under this section becomes effective when signed by
 14 the executive director. The emergency order shall be delivered by certified mail to
 15 the last known address of the licensee or agent. The order shall be deemed
 16 received by the licensee or agent within three (3) days of its mailing with the
 17 United States Postal Service.

18 (4) A licensee or agent aggrieved by an emergency order issued by the executive
 19 director under this section may file with the executive director a written appeal
 20 for an emergency hearing. The application for a hearing shall be filed with the
 21 executive director within twenty (20) days of the date of the emergency order.

22 (5) Upon receipt of a written appeal by any licensee or agent aggrieved by an
 23 emergency order issued under this section, the executive director shall conduct
 24 an emergency hearing as required under KRS 13B.125, within ten (10) working
 25 days from the date of receipt of the appeal, unless the parties agree otherwise.
 26 The hearing officer shall render a written decision affirming, modifying or
 27 reversing the emergency order within five (5) working days of the completion of

1 the hearing. The emergency order shall be affirmed if there is substantial
2 evidence of a violation of law that constitutes an immediate danger to the public
3 health, safety, or welfare.

4 SECTION 24. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
5 READ AS FOLLOWS:

6 The executive director may levy a civil penalty against a person that violates any
7 provision of or administrative regulation promulgated under this chapter or order
8 issued by the executive director under this chapter. The civil penalty shall be not less
9 than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per
10 day for each day the violation is outstanding, plus the state's costs and expenses for the
11 examination, investigation, and prosecution of this matter, including reasonable
12 attorney's fees and court costs.

13 SECTION 25. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
14 READ AS FOLLOWS:

15 The executive director may enter into a consent order with another person at any time,
16 in order to resolve a matter arising under this chapter. A consent order shall be signed
17 by the person to whom it is issued or by the person's authorized representative and
18 shall indicate agreement with the terms contained in the order. A consent order may
19 provide that it does not constitute an admission by a person that this chapter, or an
20 administrative regulation promulgated under this chapter, or an order issued under
21 this chapter has been violated. Any consent order that the executive director enters into
22 in order to resolve a matter arising under this chapter shall be deemed an
23 administrative action and a public record.

24 SECTION 26. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
25 READ AS FOLLOWS:

26 The executive director may stay, suspend or postpone the effective date of an order
27 issued under this chapter, pending the administrative proceeding and the issuance of a

final order resulting from the proceeding, upon written request by the affected person, licensee, or agent.

SECTION 27. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Any person aggrieved by the entry of an order by the executive director under this chapter may file written application for an administrative hearing.

(2) The written application for a hearing under this chapter shall be made in good faith and shall state the reasons or grounds the person is so aggrieved and the remedy sought at the hearing.

(3) Any application for a hearing under this chapter shall be filed with the executive director within twenty (20) days of the date of the order.

(4) If the executive director finds that the application for a hearing is made in good faith, and that the applicant would be aggrieved as claimed if his grounds are established, then a hearing shall be held in accordance with KRS Chapter 13B.

(5) An appeal from the executive director shall be taken only from a final order.

(6) The appeal from a final order issued by the executive director shall be granted as a matter of right to the Franklin Circuit Court.

SECTION 28. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

(1) Any person aggrieved by the conduct of a licensee or agent under this chapter in connection with the licensee's or agent's regulated activities may file a written complaint with the executive director who may investigate the complaint.

(2) In the course of the investigation initiated by a complaint or by the executive director, the executive director may:

(a) Subpoena witnesses;

(b) Administer oaths;

(c) Examine any individual under oath; and

1 (d) Compel the production of records, books, papers, contracts, or other
 2 documents relevant to the investigation.

3 (3) If any person fails to testify or to comply with a subpoena from the executive
 4 director under this section, then the executive director may petition the Franklin
 5 Circuit Court or any court of competent jurisdiction for enforcement.

6 (4) The license of any licensee or the designation of an agent under this chapter who
 7 fails to comply with a subpoena of the executive director may be suspended
 8 pending compliance with the subpoena.

9 (5) The executive director may investigate all complaints filed by any person.

10 SECTION 29. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) A person that intentionally or knowingly makes a false statement,
 13 misrepresentation, or false certification in a record filed or required to be
 14 maintained under this chapter or that intentionally or knowingly makes a false
 15 entry or omits a material entry in such a record is guilty of a Class D felony.

16 (2) A person that intentionally or knowingly engages in any activity for which a
 17 license is required under this chapter without being licensed under this chapter is
 18 guilty of a Class C felony.

19 SECTION 30. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 20 READ AS FOLLOWS:

21 All administrative proceedings under this chapter shall be conducted in accordance
 22 with KRS Chapter 13B.

23 SECTION 31. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO
 24 READ AS FOLLOWS:

25 (1) The office shall exercise all administrative functions of the state in relation to the
 26 regulation, supervision, and licensing of money transmitters.

27 (2) The executive director may promulgate, amend, and repeal any administrative

regulations, forms, and orders as are necessary to interpret and enforce the provisions of this chapter.

(3) The executive director may request any additional information as he deems necessary to interpret and carry out any of the provisions of this chapter from any applicant, licensee, agent, responsible individual, controlling person, executive officer, or key shareholder.

SECTION 32. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

In addition to the requirements contained in this chapter, every licensee and agent shall comply with all applicable federal and state laws.

SECTION 33. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

A license issued under the provisions of KRS Chapter 366 that is in effect immediately prior to the effective date of this Act shall remain in force as a license under this chapter until midnight on September 30, 2006, and the licensee shall be governed by the provisions of this chapter with the exception that such licensees shall be given until midnight on September 30, 2006, to be in compliance with this chapter. Such licensees must file an application for a renewal license pursuant to this chapter within three (3) months after the effective date of this Act. Upon compliance with the provisions of this chapter, applicants shall be issued a money transmitter license effective October 1, 2006 through September 30, 2007.

SECTION 34. A NEW SECTION OF KRS CHAPTER 366A IS CREATED TO READ AS FOLLOWS:

It is the intent of the General Assembly to establish a state system of licensure and regulation to ensure the safe and sound operation of money transmission to ensure that this business is not used for criminal purposes, to promote confidence in the state's financial system, and to protect the public interest.

1 Section 35. KRS 378.070 is amended to read as follows:

- 2 (1) Any transfer declared by KRS 378.060 to inure to the benefit of creditors generally
 3 shall be subject to the control of courts of equity, upon the petition of any person
 4 interested filed within ninety (90) days~~[six (6) months]~~ after the mortgage or
 5 transfer is legally lodged for record or the delivery of the property transferred.
- 6 (2) Any person interested may unite in the petition, but it is not necessary that any
 7 person other than the debtor and the transferee be made defendants. The action and
 8 proceedings as to the mode of proving claims, and otherwise, shall be conducted as
 9 are actions and proceedings for the settlement of the estates of deceased persons,
 10 insofar as they are applicable.
- 11 (3) The ninety (90) day limitation period specified in subsection (1) of this section
 12 shall be extended to one (1) year if the transaction is between the debtor and an
 13 insider. As used in this subsection, the term "insider" shall carry the same
 14 meaning as set out in 11 U.S.C. sec. 101.

15 Section 36. Effective October 1, 2006, the following KRS sections are repealed:

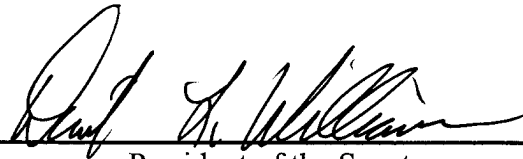
- 16 366.010 Definitions.
- 17 366.020 License required for business of selling checks.
- 18 366.023 Examination of licensees -- Fees.
- 19 366.030 Exemption of certain businesses.
- 20 366.040 Qualifications of licensee.
- 21 366.050 Application for license.
- 22 366.060 Investigation fees -- Bond to be filed with application.
- 23 366.070 Investigation of applicant.
- 24 366.080 Bond to be maintained by licensee -- New or supplemental bond.
- 25 366.090 Annual license fee.
- 26 366.100 Business, where conducted -- Banks may sell checks through agents.
- 27 366.110 Liability of licensee on sale of checks.

- 1 366.120 Checks to bear name of licensee.
- 2 366.140 Hearing on denial or revocation of license.
- 3 366.150 Citation of law.
- 4 366.990 Penalties.

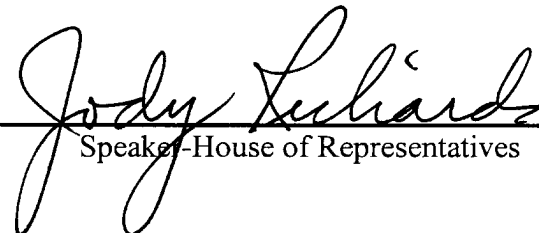
5 Section 37. Whereas a federal judge has determined that the Kentucky Sales of
6 Checks Act, KRS Chapter 366, does not encompass the electronic transmission of money
7 and hence has determined that certain criminal defendants could not be prosecuted under
8 certain provisions of the USA PATRIOT Act of 2001, Pub.L.No. 107-56, for illegally
9 engaging in the business of money transmission without a license and, whereas the
10 electronic transmission of money increasingly involves entrusting large sums of money
11 with unregulated persons, an emergency is declared to exist, and the Kentucky Money
12 Transmitters Act of 2006 shall take effect upon its passage and approval by the Governor
13 or upon its otherwise becoming a law.

14 Section 38. The Reviser of Statutes shall renumber KRS Chapters 287, 288, 290,
15 291, 294, 366, 366A and 368 as subtitles to a single KRS Chapter entitled the "Kentucky
16 Financial Services Code" and shall adjust reference numbers throughout the Kentucky
17 Revised Statutes to conform.

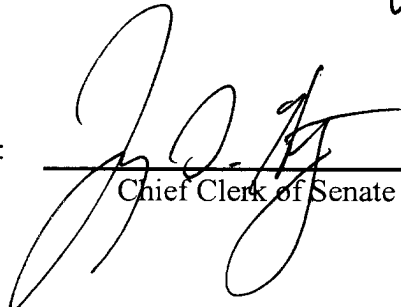
18 Section 39. The Reviser of Statutes shall renumber KRS 287.011, 287.012,
19 287.013, 287.020, and 287.025 as part of a separate subtitle of the code created by
20 Section 38 of this Act and shall adjust reference numbers throughout the Kentucky
21 Revised Statutes to conform.



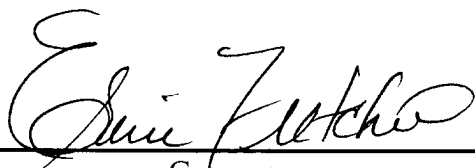
President of the Senate



Speaker House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 